

**Remarks:**

The applicants thank the examiner for the interview granted prior to the present RCE, on September 9, 2004 (“the Interview”). Filed with this Amendment is an  
5 Applicants’ Interview Summary containing a statement regarding the substance of the interview.

In the Office Action, the applicants were requested to provide a full copy of the translation of JP Hei 3-85886, if it is available. Figure 11(A) was objected to for lacking a  
10 legend designating the figure as “prior art.” Claims 1-3 and 12 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. Claims 1-21 were rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Japanese Laid-open No. Hei 3-85886 (“Hei 3-85886”, English translation), in view of  
15 JP2000025869 (Derwent Abstract) and further in view of Japanese Patent Application Laid-open No. Hei 9-86569 (“Hei 9-86569”, English translation). Claims 11-21 were also rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over the applicants’ admitted prior art in view of O’Connor et al., U.S. patent publication US 2003/0108646 A1.  
Priority to JP 2001-028776 was refused on the assertion that the priority document was not  
20 submitted.

The above-described requests, objections and rejections are addressed as follows:

25 **I. REQUESTED TRANSLATION**

The applicants were requested to provide a full copy of the translation of JP Hei 3-85886, if it is available. With apologies the applicants note that, as discussed in the Interview, the applicants do not possess a full copy of a translation of the JP Hei 3-85886  
30 reference.

**II. OBJECTION TO THE DRAWINGS**

Figure 11(A) was objected to for lacking a legend designating the figure as "prior art." As agreed upon in the Interview, applicants respectfully note that a replacement sheet that included a legend designating Figure 11(A) as prior art was supplied in an Amendment dated November 4, 2003. The drawing is presently available in PAIR. The applicants respectfully request the objection to the drawings be withdrawn.

**III. REJECTION OF CLAIMS 1-3 UNDER 35 U.S.C. § 112**

Claims 1-3 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. In particular, the examiner alleged the term "configured" is vague and indefinite, and suggested the phrase "configured as a tray mat to be" be deleted or clarified. Claims 1 and 3 have now been amended to better describe the invention. Please note that claims 7, 10, 16 and 20 have also been amended consistent with the amendment of claim 3. Claims 2 and 3 depend from claim 1.

Also, the examiner correctly pointed out that several words were missing from claim 12, making it indefinite. The applicants apologize for this typographical error. Because claim 12 has been canceled, no correction is now needed.

In light of these amendments, the applicants respectfully request the rejections under 35 U.S.C. § 112, second paragraph, of claims 1-3, be withdrawn.

**IV. BRIEF REVIEW OF THE CURRENT INVENTION**

Prior to discussing the rejections of the claims in detail, it would be useful to quickly review the purpose of the invention. In the Background of the Invention, it is discussed that research by the applicants has determined that deterioration of a traditionally packaged meat product varies between the outer surface and the underside surface, that is, the surface placed upon a tray, or a traditional tray mat, such as those

discussed in the Description of Related Art, namely, Hei 3-85886 and Hei 9-86569. The underside surface deteriorates at a faster rate due to several factors, including pressure, lack of aeration, remaining in contact with liquid from the meat, etc. Prior mats have been created to increase the removal of liquid from the surface of the meat, thereby improving  
5 the appearance. A purpose of the current invention however, is to address the accelerated rate of deterioration due to a lack of aeration on the underside of the packaged meat.

To address this specific problem, the applicants have provided features beyond existing absorption mats. Two of the added features being claimed are 1) providing concave / convex hollow protrusions on the porous surface sheet which are shaped to retain additional air for aeration, and minimize contact with the food item (thereby allowing more surface area for aeration, and less net food surface receiving pressure), and  
10 2) providing additional horizontal aeration by providing a mat with certain breathability properties, and adding a structural element, namely, notched edges on the pores of the porous surface sheet. These notched edges on the pores contact the absorption sheet, and allow additional horizontal breathability, thereby differentiating the current absorption mat  
15 from prior absorption mats.

20 **V. CLAIM REJECTIONS OVER THE CITED ART**

Claims 1-21 were rejected as unpatentable under 35 U.S.C. § 103(a), over Japanese Laid-open No. Hei 3-85886, English translation ("Hei 3-85886"), in view of JP 2000025869 (Derwent Abstract) and further in view of Japanese Patent Application  
25 Laid-open No. Hei 9-86569, English translation ("Hei 9-86569").

The Office Action recites that "[i]t should be noted that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either  
30 anticipation or obviousness has been established. See M.P.E.P. § 2112.01." The Office Action also recites that "... no physical features are present in claim 1 so as to exclude the applied art from the scope thereof, and 'adding breathability' is relative terminology that is neither qualified or quantified. Thus, holes in the prior art devices serve to meet the broad and vague claim limitations."(Page 5, end of first paragraph)

The applicants respectfully traverse the assertion that the claim limitations read on the cited art. In order to overcome any issues as to the construction of the claims, applicants have amended the claims. As described below, the cited patents fail to disclose all of the recited claim elements.

5

### **Rejections Recited in Paragraph 7 of the Office Action**

To establish a *prima facie* case of obviousness, the prior art references, when combined, must teach or suggest **all the claim limitations**. (emphasis added) *See*,  
10 M.P.E.P. § 706.02(j).

#### Claim 1

Claim 1 has been amended to incorporate limitations from claim 11, and to clarify  
15 the clause regarding breathability. As amended, independent claim 1 recites:

... wherein said porous surface sheet comprises a film having  
a **plurality of protrusions**, each protrusion having a convex  
side and a concave side; wherein a hollow cavity is formed  
20 adjacent the protrusions on the convex side; wherein a **pore**  
**is provided at the bottom of said concave side of each**  
**protrusion** such that the protrusion forms a minute aperture;  
and wherein said porous surface sheet **adds to the**  
**breathability of said absorption sheet** in both the  
25 horizontal and thickness directions. (Emphasis added)

In the discussions of claim 1 and claim 11 (which has now been incorporated into  
claim 1), the Office Action fails to identify any reference having a surface sheet that forms  
a plurality of protrusions, each protrusion being provided with a pore at its bottom.

30 The applicants note that, in considering the breathability of the composite structure  
of the porous surface sheet and the absorption sheet, the “porous surface sheet adds to the  
breathability of said absorption sheet”. In other words, the breathability of the drip  
absorption mat is greater than the breathability of the absorption mat by itself.

Because the cited art fails to teach or suggest the absorption mat as recited in claim 1, the cited references fail to establish a *prima facie* case of obviousness. Dependent claims 2-3 incorporate the limitations of independent claim 1. Accordingly, the rejection of claims 1-3 under 35 U.S.C. § 103(a) is improper, and the applicants respectfully request it be withdrawn.

5

Claim 4

10

Independent claim 4 recites:

... a porous surface sheet adjoining the absorption sheet, and having a first side facing the absorption sheet and a second side configured to adjoin the food; wherein the drip absorption mat is characterized by a **ventilation resistance, in the thickness direction, that does not exceed 1.00 Kpa·s/m.** (Emphasis added)

15

20

The Office Action recites that it would be “obvious to modify the apertures (holes) of JP ‘886, as taught by JP’869, so as to provide a suitable air permeability.” The applicants note that there is no indication in JP ‘886 of any air permeability in the thickness direction of the absorption sheet. There are, however, pores in the plastic (cover) sheet. Modifying these holes in the plastic cover sheet would not create air permeability in the thickness direction of the absorption sheet.

25

Because the cited art fails to teach or suggest the absorption mat as recited in claim 4, the cited references fail to establish a *prima facie* case of obviousness. Dependent claims 5-10 incorporate the limitations of independent claim 4. Accordingly, the rejection of claims 4-10 under 35 U.S.C. § 103(a) is improper, and the applicants respectfully request it be withdrawn.

30

Claims 11

As amended to incorporate claim 12, independent claim 11 recites:

5                   ... wherein a hollow cavity is formed adjacent the  
protrusions on the convex side; and wherein a pore is  
provided at the bottom of said concave side **of each**  
**protrusion such that the protrusion forms a minute**  
**aperture; wherein a terminal portion of said porous**  
10                  **surface sheet is adjacent the minute aperture and in**  
contact with the absorption sheet; and **wherein the terminal**  
**portion forms a notched edge so as to facilitate air flow**  
between the hollow cavity and the apertures. (Emphasis  
added)

15

On page 7, the Office Action recites that JP '596 discloses "a notched (open) edge." In the Interview, the examiner confirmed that the term "notched" was being interpreted to read on openings on the side of the drip absorption mat. However, the combination of limitations recited in claim 11 clearly require the terminal portion of each  
20                  aperture to form a notched edge. Therefore, the openings on the side of the drip absorption mat do not meet the claim limitations for a terminal portion forming a notched edge.

20

The applicants further note that the specification wholly supports this definition of a terminal portion forming a notched edge. The brief description of the drawings recites  
25                  that "Fig. 12 is a schematic diagram showing the shape of the terminal portion 13d in contact with the absorption sheet 11 and the surface sheet 13." Reference 13d clearly identifies the terminal portion as being at the portion of the protrusions in contact with the absorption sheet.

30

Because the cited art fails to teach or suggest the absorption mat as recited in claim 11, the cited art fails to establish a *prima facie* case of obviousness. Dependent claims 13-20 incorporate the limitations of independent claim 11. Accordingly, the rejection of claims 11 and 13-20 under 35 U.S.C. § 103(a) is improper, and the applicants respectfully request it be withdrawn.

Claim 21

As amended, independent claim 21 recites:

5                   ... wherein the surface sheet is configured to support the food item while maintaining the cavity between the absorption sheet and the surface sheet; wherein the surface sheet defines pores that allow liquid from the food item to flow through to the absorption sheet; and wherein **the cavity adds horizontal breathability to the absorption mat.**

10                   (Emphasis added)

As noted on pages 6-7 of the Office Action, and as confirmed in the Interview, the examiner extrapolates the phrase “the apparent thickness of said porous plastic sheet including the three-dimensional apertures is four times or more the thickness of said plastic sheet itself” to disclose applicants claimed structure. More particularly, on page 7 the Office Action recites that “in the absence of evidence to the contrary, it is the examiner’s position that JP ‘886 implicitly teaches a hollow cavity under the surface of the convex portion of the surface sheet.”

20                   The applicants respectfully assert that this position is based on impermissible hindsight. Furthermore, this statement contravenes the clear requirement in M.P.E.P. 2112 (IV) that “[t]o establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.’”

25                   In the Interview, the applicants’ attorney offered a first example of an embodiment under the cited reference that lacked the asserted inherent features. As a second and perhaps better example of the fact that the claimed cavity it is not necessarily present in embodiments under JP ‘886, the applicants offer a second hypothetical structure created by inverting (i.e., flipping over) the surface sheet on applicants described embodiment. This hypothetical structure would have a cavity facing the food rather than between the absorption sheet and the surface sheet, as recited in claim 21. Nevertheless, this hypothetical structure could meet the requirements of JP ‘886. Thus, the structure

described in the cited art does not necessarily have the asserted inherent features, and the teachings of JP '886 clearly do not inherently define the cavity between the absorption sheet and the surface sheet, as recited in claim 21.

5        In the interview, the examiner asserted that he would reconsider his position if the applicants provided evidence that breathability in a horizontal direction is not an inherent property in the cited art. The applicants respectfully note that this second hypothetical structure doesn't even form a "cavity between the absorption sheet and the surface sheet," and thus cannot provide such breathability.

10

Because the cited art fails to teach or suggest the absorption mat as recited in claim 21, the cited references fail to establish a *prima facie* case of obviousness. Accordingly, the rejection of claim 21 under 35 U.S.C. § 103(a) is improper, and the applicants respectfully request it be withdrawn.

15

#### **Rejections Recited in Paragraph 8 of the Office Action**

Claims 11-21 were also rejected under 35 U.S.C. § 103(a), over the applicants' admitted prior art in view of O'Connor et al., U.S. patent publication

20      US 2003/0108646 A1. The Office Action, paragraph 8, alleges that the applicants have failed to provide a certified translation of the priority document to overcome the O'Connor et al. reference.

25      As agreed upon in the Interview, applicants respectfully note that a certified translation of priority document JP 2001-028776 was supplied in the response dated May 5, 2004. The filing date of this Japanese priority document is February 5, 2001, antedating the O'Connor et al. reference. The applicants respectfully request this rejection of claims 11-21, under 35 U.S.C. § 103(a), be withdrawn.

30

**VI. CONDITIONAL REQUEST FOR INTERVIEW**

In light of the prior interview, and applicants' amendments and remarks, applicants believe that the claims are now in condition for allowance. Nevertheless, if the examiner 5 believes that claims of the application should be finally rejected, or if the examiner has issues that merit discussion, then the applicants request a telephonic interview to try and efficiently resolve all open issues.

10 **VII. CONCLUSION**

In view of the foregoing, the applicants respectfully request that a timely Notice of Allowance be issued in this case.

15 Respectfully submitted,

SHIBATA et al.

20 By:



John A. Griecci

Registration No. 39,694

For: The Law Office of John A. Griecci

25

703 Pier Avenue, Suite B #657  
Hermosa Beach, CA 90254  
(310) 376-6527